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II

106TH CONGRESS
1ST SESSION

S. 1213

To amend the Indian Child Welfare Act of 1978, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 1999

Mr. MCCAIN (for himself, Mr. CAMPBELL, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To amend the Indian Child Welfare Act of 1978, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Child Welfare Act Amendments of 1999".

SEC. 2. EXCLUSIVE JURISDICTION.

Section 101(a) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1911(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by striking the last sentence and inserting the following:

"(2) An Indian tribe shall retain exclusive jurisdiction over any child custody proceeding that involves an Indian child, notwithstanding any subsequent change in the residence or domicile of the Indian child, in any case in which the Indian child—

"(A) resides or is domiciled within the reservation of that Indian tribe and is made a ward of a tribal court of that Indian tribe; or

"(B) after a transfer of jurisdiction is carried out under subsection (b), becomes a ward of a tribal court of that Indian tribe.".

SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.

Section 101(c) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1911(c)) is amended by striking "In any State court proceeding" and inserting "Except as provided in section 103(e), in any State court proceeding".

SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.

Section 103(a) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1913(a)) is amended—

(1) by striking the first sentence and inserting the following:

"(a)(1) Where any parent or Indian custodian voluntarily consents to foster care or preadoptive or adoptive

placement or to termination of parental rights, such consent shall not be valid unless—

"(A) executed in writing;

"(B) recorded before a judge of a court of competent jurisdiction; and

"(C) accompanied by the presiding judge's certificate that—

"(i) the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian; and

"(ii) any attorney or public or private agency that facilitates the voluntary termination of parental rights or preadoptive or adoptive placement has—

"(I) informed the natural parents of the placement options with respect to the child involved;

"(II) informed those parents of the applicable provisions of this Act; and

"(III) certified that the natural parents will be notified within 10 days after any change in the adoptive placement.";

(2) by striking "The court shall also certify" and inserting the following:

"(2) The court shall also certify";

(3) by striking "Any consent given prior to," and inserting the following:

"(3) Any consent given prior to,"; and

(4) by adding at the end the following:

"(4) An Indian custodian who has the legal authority to consent to an adoptive placement shall be treated as a parent for the purposes of the notice and consent to adoption provisions of this Act.".

SEC. 5. WITHDRAWAL OF CONSENT.

Section 103(b) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1913(b)) is amended—

(1) by inserting "(1)" before "Any"; and

(2) by adding at the end the following:

"(2) Except as provided in paragraph (4), a consent to adoption of an Indian child or voluntary termination of parental rights to an Indian child may be revoked, only if—

"(A) no final decree of adoption has been entered; and

"(B)(i) the adoptive placement specified by the parent terminates; or

"(ii) the revocation occurs before the later of the end of—

"(I) the 180-day period beginning on the date on which the tribe of the Indian child receives written notice of the adoptive placement provided in accordance with the requirements of subsections (c) and (d); or

"(II) the 30-day period beginning on the date on which the parent who revokes consent receives notice of the commencement of the adoption proceeding that includes an explanation of the revocation period specified in this subclause.

"(3) Immediately upon an effective revocation under paragraph (2), the Indian child who is the subject of that revocation shall be returned to the parent who revokes consent.

"(4) Subject to paragraph (6), if, by the end of the applicable period determined under subclause (I) or (II) of paragraph (2)(B)(ii), a consent to adoption or voluntary termination of parental rights has not been revoked, a parent may revoke such consent after that date only—

"(A) pursuant to applicable State law; or

"(B) if the parent of the Indian child involved petitions a court of competent jurisdiction, and the court finds that the consent to adoption or voluntary

termination of parental rights was obtained through fraud or duress.

"(5) Subject to paragraph (6), if a consent to adoption or voluntary termination of parental rights is revoked under paragraph (4)(B), with respect to the Indian child involved—

"(A) in a manner consistent with paragraph (3), the child shall be returned immediately to the parent who revokes consent; and

"(B) if a final decree of adoption has been entered, that final decree shall be vacated.

"(6) Except as otherwise provided under applicable State law, no adoption that has been in effect for a period longer than or equal to 2 years may be invalidated under this subsection.".

SEC. 6. NOTICE TO INDIAN TRIBES.

Section 103(c) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1913(c)) is amended to read as follows:

"(c)(1) A party that seeks the voluntary placement of an Indian child or the voluntary termination of the parental rights of a parent of an Indian child shall provide written notice of the placement or proceeding to the tribe of that Indian child. A notice under this subsection shall be sent by registered mail (return receipt requested) to

the tribe of the Indian child, not later than the applicable date specified in paragraph (2) or (3).

"(2)(A) Except as provided in paragraph (3), notice shall be provided under paragraph (1) by the applicable date specified in each of the following cases:

"(i) Not later than 100 days after any foster care placement of an Indian child occurs.

"(ii) Not later than 5 days after any preadoptive or adoptive placement of an Indian child.

"(iii) Not later than 10 days after the commencement of any proceeding for a termination of parental rights to an Indian child.

"(iv) Not later than 10 days after the commencement of any adoptive proceeding concerning an Indian child.

"(B) A notice described in subparagraph (A)(ii) may be provided before the birth of an Indian child if a party referred to in paragraph (1) contemplates a specific adoptive or preadoptive placement.

"(3) If, after the expiration of the applicable period specified in paragraph (2), a party referred to in paragraph (1) discovers that the child involved may be an Indian child—

"(A) the party shall provide notice under paragraph (1) not later than 10 days after the discovery; and

"(B) any applicable time limit specified in subsection (e) shall apply to the notice provided under subparagraph (A) only if the party referred to in paragraph (1) has, on or before commencement of the placement, made reasonable inquiry concerning whether the child involved may be an Indian child.".

SEC. 7. CONTENT OF NOTICE.

Section 103(d) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1913(d)) is amended to read as follows:

"(d) Each written notice provided under subsection (c) shall be based on a good faith investigation and contain the following:

"(1) The name of the Indian child involved, and the actual or anticipated date and place of birth of the Indian child.

"(2) A list containing the name, address, date of birth, and (if applicable) the maiden name of each Indian parent and grandparent of the Indian child, if—

"(A) known after inquiry of—

"(i) the birth parent placing the child or relinquishing parental rights; and

"(ii) the other birth parent (if available); or

"(B) otherwise ascertainable through other reasonable inquiry.

"(3) A list containing the name and address of each known extended family member (if any), that has priority in placement under section 105.

"(4) A statement of the reasons why the child involved may be an Indian child.

"(5) The names and addresses of the parties involved in any applicable proceeding in a State court.

"(6)(A) The name and address of the State court in which a proceeding referred to in paragraph (5) is pending, or will be filed; and

"(B) the date and time of any related court proceeding that is scheduled as of the date on which the notice is provided under this subsection.

"(7) If any, the tribal affiliation of the prospective adoptive parents.

"(8) The name and address of any public or private social service agency or adoption agency involved.

"(9) An identification of any Indian tribe with respect to which the Indian child or parent may be a member.

"(10) A statement that each Indian tribe identified under paragraph (9) may have the right to intervene in the proceeding referred to in paragraph (5).

"(11) An inquiry concerning whether the Indian tribe that receives notice under subsection (c) intends to intervene under subsection (e) or waive any such right to intervention.

"(12) A statement that, if the Indian tribe that receives notice under subsection (c) fails to respond in accordance with subsection (e) by the applicable date specified in that subsection, the right of that Indian tribe to intervene in the proceeding involved shall be considered to have been waived by that Indian tribe.".

SEC. 8. INTERVENTION BY INDIAN TRIBE.

Section 103 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1913) is amended by adding at the end the following:

"(e)(1) The tribe of the Indian child involved shall have the right to intervene at any time in a voluntary child custody proceeding in a State court only if—

"(A) in the case of a voluntary proceeding to terminate parental rights, the Indian tribe sent a notice of intent to intervene or a written objection to

the adoptive placement to the court or to the party that is seeking the voluntary placement of the Indian child, not later than 30 days after receiving notice that was provided in accordance with the requirements of subsections (c) and (d); or

"(B) in the case of a voluntary adoption proceeding, the Indian tribe sent a notice of intent to intervene or a written objection to the adoptive placement to the court or to the party that is seeking the voluntary placement of the Indian child, not later than the later of—

"(i) 90 days after receiving notice of the adoptive placement that was provided in accordance with the requirements of subsections (c) and (d); or

"(ii) 30 days after receiving a notice of the voluntary adoption proceeding that was provided in accordance with the requirements of subsections (c) and (d).

"(2)(A) Except as provided in subparagraph (B), the tribe of the Indian child involved shall have the right to intervene at any time in a voluntary child custody proceeding in a State court in any case in which the Indian tribe did not receive written notice provided in accordance with the requirements of subsections (c) and (d).

"(B) An Indian tribe may not intervene in any voluntary child custody proceeding in a State court if the Indian tribe gives written notice to the State court or any party involved of—

"(i) the intent of the Indian tribe not to intervene in the proceeding; or

"(ii) the determination by the Indian tribe that—

"(I) the child involved is not a member of, or is not eligible for membership in, the Indian tribe; or

"(II) neither parent of the child is a member of the Indian tribe.

"(3) If an Indian tribe files a motion for intervention in a State court under this subsection, the Indian tribe shall submit to the court, at the same time as the Indian tribe files that motion, a tribal certification that includes a statement that documents, with respect to the Indian child involved, the membership or eligibility for membership of that Indian child in the Indian tribe under applicable tribal law.

"(f) Any act or failure to act of an Indian tribe under subsection (e) shall not—

"(1) affect any placement preference or other right of any individual under this Act;

"(2) preclude the Indian tribe of the Indian child that is the subject of an action taken by the Indian tribe under subsection (e) from intervening in a proceeding concerning that Indian child if a proposed adoptive placement of that Indian child is changed after that action is taken; or

"(3) except as specifically provided in subsection (e), affect the applicability of this Act.

"(g) Notwithstanding any other provision of law, no proceeding for a voluntary termination of parental rights or adoption of an Indian child may be conducted under applicable State law before the date that is 30 days after the tribe of the Indian child receives notice of that proceeding that was provided in accordance with the requirements of subsections (c) and (d).

"(h) Notwithstanding any other provision of law (including any State law)—

"(1) a court may approve, if in the best interests of an Indian child, as part of an adoption decree of that Indian child, an agreement that states that a birth parent, an extended family member, or the tribe of the Indian child shall have an enforceable right of visitation or continued contact with the Indian child after the entry of a final decree of adoption; and

"(2) the failure to comply with any provision of a court order concerning the continued visitation or contact referred to in paragraph (1) shall not be considered to be grounds for setting aside a final decree of adoption.".

SEC. 9. PLACEMENT OF INDIAN CHILDREN.

Section 105(c) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1915(c)) is amended—

(1) in the second sentence—

(A) by striking "Indian child or parent" and inserting "parent or Indian child"; and

(B) by striking the colon after "considered" and inserting a period;

(2) by striking "*Provided,* That where" and inserting: "In any case in which"; and

(3) by inserting after the second sentence the following: "In any case in which a court determines that it is appropriate to consider the preference of a parent or Indian child, for purposes of subsection (a), that preference may be considered to constitute good cause.".

SEC. 10. FRAUDULENT REPRESENTATION.

Title I of the Indian Child Welfare Act of 1978 (25 U.S.C. 1911 et seq.) is amended by adding at the end the following:

"SEC. 114. FRAUDULENT REPRESENTATION.

"(a) IN GENERAL.—With respect to any proceeding subject to this Act involving an Indian child or a child who may be considered to be an Indian child for purposes of this Act, a person, other than a birth parent of the child, shall, upon conviction, be subject to a criminal sanction under subsection (b) if that person knowingly and willfully—

"(1) falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether, for purposes of this Act—

"(A) a child is an Indian child; or

"(B) a parent is an Indian;

"(2)(A) makes any false, fictitious, or fraudulent statement, omission, or representation; or

"(B) falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact described in paragraph (1); or

"(3) assists any person in physically removing a child from the United States in order to obstruct the application of this Act.

"(b) CRIMINAL SANCTIONS.—The criminal sanctions for a violation referred to in subsection (a) are as follows:

"(1) for an initial violation, a person shall be fined in accordance with section 3571 of title 18,

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United States Code, or imprisoned not more than 1 year, or both.

"(2) For any subsequent violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 5 years, or both.".

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